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Filing date: **03/10/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212906
Party	Plaintiff Square, Inc.
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Submission	Other Motions/Papers
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Date	03/10/2015
Attachments	Cashsquare - Opposer's Opposition to Applicant's Amended Motion to Amend Application After Notice of Opposition.pdf(350215 bytes ) Cashsquare - Declaration of Hailey Teton.pdf(73781 bytes ) Cashsquare Exhibits 1 2 3 4 5 6.pdf(1818890 bytes )

**In the matter of**  
**Trademark Application Serial No.: 85/827,823**  
**Filed: January 21, 2013**  
**Published: June 11, 2013**  
**Mark: CASHSQUARE (and design)**

**Applicant.**

[illegible]

Opposition No. 91212906

Cashsquare, Inc.'s ("Applicant's") Amended Motion to Amend Application After Notice of Opposition ("Motion to Amend") should be denied. Applicant seeks to modify its "CASHSQUARE" mark by removing the "dot" within the stylized Q from the Mark as set forth in its Application, thus changing the stylized Q to a normal Q. This proposed modification constitutes a material alteration of the Mark, and is prohibited by 37 C.F.R. §2.72 (Trademark Rule 2.72). Additionally, Applicant's original specimen does not support the proposed amendment, and Applicant has not filed, nor can it file, a substitute specimen as required under Trademark Rule 2.72(a)(1). Moreover, despite the fact that Applicant seeks to amend and continues to prosecute its use-based Application, Applicant has explicitly admitted it *abandoned* the CASHSQUARE mark in favor of a purported "CASH<sup>2</sup>" mark. For all these reasons, the proposed amendment would be improper, and the Motion to Amend should therefore be denied.

## **BACKGROUND FACTS**

### **A. Procedural History**

On January 21, 2013, Applicant filed a section 1(a) actual use trademark application relating to the “CASHSQUARE” mark (“Mark”), which was published in the June 11, 2013 issue of the *Official Gazette* (“Application”). On October 9, 2013, Square, Inc. (“Opposer”) filed its Notice of Opposition (the “Opposition”) against the Application based on a likelihood of confusion between the Mark and Opposer’s marks. Opposer’s marks consist of two U.S. Trademark Registrations for SQUARE marks (Reg. Nos. 3,917,735 and 3,962,489) and two pending U.S. Trademark applications for SQUARE (and design) and Design only marks (Serial Nos. 85/542,833 and 85/542,832) (collectively, with SQUARE word mark, “SQUARE Marks”). See Opposition ¶¶ 2–4. In particular, the “CASHSQUARE” Mark “incorporates key elements of Opposer’s SQUARE Marks, including both the word SQUARE and the distinctive design element of Opposer’s marks.” *Id.* ¶ 22. Not only do the marks look similar, but Applicant intentionally uses Opposer’s “square-within-a-square design in the visual representation of the CASHSQUARE mark, incorporating it as the ‘Q’ in the CASHSQUARE, thereby further suggesting . . . a relationship or affiliation between Applicant and Opposer.” *Id.* ¶ 19. Applicant contends that the Mark is not similar, and that the goods and services provided by Applicant and Opposer are different. See Motion to Amend at 3.

### **B. Applicant’s CASHSQUARE Mark**

Applicant’s section 1(a) Application states that the Mark consists of a wording ‘cashsquare’ with a stylized letter ‘Q’ and that the Mark was first used anywhere and in commerce by March 9, 2012. See Application. However, Applicant admitted in verified discovery responses served in September 2014 that the CASHSQUARE Mark (the subject of the Application) was abandoned in favor of another mark. Specifically, on September 24, 2014,

Applicant served its responses to Opposer's discovery requests, which included requests for information about how the Mark was chosen. Opposer's Interrogatory No. 2 requested a detailed description of how Applicant selected and adopted the stylized Q, including what impression Applicant sought to convey to consumers by using the stylized Q. *See* Hailey Teton's Declaration In Support of Opposer Square, Inc.'s Opposition to Applicant's Amended Motion to Amend Application After Notice of Opposition ("Teton Declaration") ¶ 2, Ex. 1 (Interrogatory No. 2 and Applicant's Response). In response, Applicant stated:

The stylized Q was developed by a web designer who sold it to the company. The stylized Q was determined to be the most aesthetically pleasing of several options presented by the web designer. **The stylized Q was also chosen because it was visually similar to a pin that could be placed on a map location.**

*Id.* (emphasis added). Moreover, Applicant further explained that "The stylized Q is no longer being used by the company, and has been replaced by the stylized "CASH<sup>2</sup>." *Id.* Applicant repeated this statement throughout its responses to Opposer's interrogatory requests, including by explaining that the "CASH<sup>2</sup>" mark eliminates any risk of confusion. *See, e.g.,* Teton Declaration ¶ 2, Ex. 1 (Response to Interrogatory No. 16, stating: "Moreover, Applicant has abandoned the use of the stylized Q, in favor of "CASH<sup>2</sup>." In instances where the stylized logo is used, rather than writing out "Cashsquare" **there is no risk of confusion** because the logo does not use the word "square" but rather a superscripted numeral 2. Without the presence of the word "square" or the stylized Q, there is no risk of confusion.") (emphasis added); *id.* (Response to Interrogatory No. 29, stating: "Further, Applicant has abandoned its use of the stylized Q in favor of the "Cash<sup>2</sup>" logo. The use of this stylized logo does not use the word "square" and **removed any chance of a falsely suggested trade connection.**") (emphasis added); *id.* (Response to Interrogatory No. 17 also describes abandonment of the stylized Q); *see also id.* at ¶ 3, Ex. 2 (Request for Admission No. 66 and Response, where Applicant **admits that the**

stylized Q in CASHSQUARE looks like Square's Marks, specifically the Marks in Application Serial Nos. 85/542,832 or 85/542,833). Even though Applicant admits no less than four times in its discovery responses that it abandoned the CASHSQUARE Mark—and with that, the stylized Q—at least as early as September 2014, Applicant now seeks leave to amend the CASHSQUARE Mark, not to reflect the “CASH<sup>2</sup>” mark it claims to be using, but to remove the “dot” from the stylized Q while otherwise retaining the CASHSQUARE Mark, thus changing the commercial impression from a square-within-a-square design to a normal Q. *See* Motion to Amend at 3.

In response to other discovery requests propounded by Opposer, Applicant identified that it advertises, markets, offers for sale, or sells under or in connection with the CASHSQUARE Mark through the company's website ([www.cashsquare.com](http://www.cashsquare.com)), Facebook page ([www.facebook.com/cashsquare](http://www.facebook.com/cashsquare)), Twitter page ([www.twitter.com/cashsquare](http://www.twitter.com/cashsquare)), and through the iTunes App Store. *See* Teton Declaration ¶ 2, Ex. 1 (Response to Interrogatory No. 5). These websites indicate Applicant cannot establish use in commerce of the proposed amended mark as of the date its application (January 21, 2013) and that, contrary to its discovery responses, it has not “abandoned” use of the CASHSQUARE mark, both with and without the stylized Q. Critically, Applicant posted a photo to its own Facebook page on *November 23, 2014*, showing the CASHSQUARE Mark without the stylized Q (and thus no longer resembling a pin on a map) with a corresponding caption indicating this was the new logo design. *See id.* ¶ 5, Ex. 4 (November 23, 2014 Facebook photo post with caption stating: “Hi Fans! We hope you are having a great weekend. Whilst you are relaxing and enjoying Cashsquare we have crafted a brand new logo. Let us know what you think! Mr. Cashsquare”). Nevertheless, there are numerous examples of Applicant's continued use of the CASHSQUARE mark, both with and

without the stylized Q, as well as the CASH<sup>2</sup> logo. Applicant's Facebook page displays the CASH<sup>2</sup> logo, as well as photos containing the CASHSQUARE mark, both with and without the stylized Q. *Id.* (screenshot of applicant's Facebook page). Applicant's Twitter page currently displays only the CASH<sup>2</sup> logo on the page itself, and in various photos posted by Applicant. *Id.* ¶ 4, Ex. 3 (screenshot of Applicant's Twitter page). The company website displays the CASHSQUARE Mark without the stylized Q, and the iTunes App store displays none of the CASHSQUARE Mark iterations. *See id.* ¶¶ 6-7; Exs. 5-6 (screenshots of Cashsquare website and product available for download on iTunes App Store).

All of these uses demonstrate that the first time Applicant used the CASHSQUARE Mark without the stylized Q was November 23, 2014, which is significantly after the time it filed the Application in January 2013, and is consistent with Applicant's discovery responses relating to abandonment of the stylized Q (though not its actual abandonment of that mark). This also means that Applicant cannot submit a substitute specimen showing use of the CASHSQUARE Mark without the stylized Q at the time of the Application (as described further below). Applicant's use of its marks shows a transition from CASHSQUARE with the stylized Q, with a pin-like mark creating a commercial impression due to the visual similarity to a map, to CASHSQUARE without pin-like similarity, to CASH<sup>2</sup>. Thus, Applicant's discovery responses, and its use of multiple different marks, demonstrate an inconsistency with Applicant's continued prosecution of the Application, including its Motion to Amend the CASHSQUARE Mark.

### **ARGUMENT**

In order to amend its Application, Applicant must establish two things that it cannot: that the proposed amendment does not materially alter the character of the original mark, and that the original specimen or a substitute specimen supports the proposed amendment. *See* 37 C.F.R.

§2.72 (Trademark Rule 2.72). Specifically, Trademark Rule 2.72 permits amendment of the description or drawing of the mark in a use-based application *only if*:

- (1) The specimens originally filed, or substitute specimens filed under § 2.59(a), support the proposed amendment; and
- (2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

Trademark Rule 2.72(a)(1)-(2). As explained more fully below, the Motion to Amend fails to establish either requirement. Further, even if Applicant *could* establish these two requirements (and it cannot), Applicant has not explained why it now seeks to amend a Mark it explicitly abandoned at least five months ago in favor of a different mark that is not part of the Application at issue here.

**A. Applicant's Proposed Amendment Materially Alters the Mark as Set Forth in the Application Such That Leave to Amend Should Be Denied**

Applicant's proposed amendment to remove the "dot," or square-within-a-square, from the stylized Q<sup>1</sup>, thereby removing the commercial impression of a pin on a map, constitutes a material alteration of the Mark as set forth in the Application, and is thus explicitly prohibited. See Trademark Rule 2.72(a). The test for determining whether a proposed amendment is a material alteration of the original Mark is articulated in the oft-cited *Visa Int'l Service Ass'n v. Life-Code Sys., Inc.*, 220 U.S.P.Q. 740, 743-44 (T.T.A.B. 1983):

The modified mark must contain what is the essence of the original mark, and the new form must create the impression of being essentially the same mark. The general test of whether an alteration is material is whether the mark would have to be republished after the alteration in order to fairly present the mark for purposes of opposition. If one mark is sufficiently different from another mark as to require republication,<sup>2</sup> it would be tantamount to a new mark appropriate for a new application.

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<sup>1</sup> Moreover, removal of the "dot" effectively turns the stylized Q into a non-stylized regular text "Q."

<sup>2</sup> While "the test refers to republication, it also applies to amendments to marks proposed before publication." TMEP § 801.14. Thus, the material alteration test is "used for evaluating

As the Trademark Manual of Examining Procedure (“TMEP”) also emphasizes, “[e]ach case must be decided on its own facts” but the “controlling question is always whether the old and new forms of the mark create essentially the same commercial impression.” TMEP §807.14. As combined, the test thus requires a comparison between the original mark and the proposed amendment, and a determination of whether the new form contains the same essence and maintains the same commercial impression as the original mark. As applied to the facts here, the test results in only one reasonable conclusion: that removal of the stylized Q constitutes a material alteration because the new form does not contain the same essence, or maintain the same commercial impression of the original CASHSQUARE Mark.

First, Applicant here has already admitted that the choice to use the stylized Q was material when presented with multiple options from a developer. *See* Teton Declaration ¶ 2, Ex. 1 (Response to Interrogatory No. 2). The impression Applicant sought to convey to consumers by using the stylized Q came from the visual similarity between the “dot,” or square-within-a-square, contained within the Q and a “pin that could be placed on a map location.” *See id.* Indeed, the pin location on a map has particular significance given that Applicant adopted the CASHSQUARE Mark to identify its mobile gaming service that “integrates Foursquare into a game enabling people to buy and sell virtual Foursquare versions of **real world locations** for virtual currency or ‘cash.’” *Id.* (Response to Interrogatory No. 1) (emphasis added). It follows that deletion of the “dot,” or the square-within-the-square, from the stylized Q would materially alter the original Mark because it removes what Applicant admits is a material component that

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amendments to marks in all phases of prosecution, i.e., before publication, after publication, and after registration.” *Id.*



contributes substantially to a consumer's commercial impression of the CASHSQUARE Mark, and the goods and services it identifies. *See* Trademark Rule 2.72; TMEP §807.14.

Second, even if Applicant had not admitted that the stylized Q was material to creating a consumer's commercial impression, deletion of the pin-like dot would *still* constitute a material alteration based on years of TTAB precedent. Notably, deletion of matter from a mark, much like addition of matter to a mark, can result in a material alteration to the original mark. *See, e.g., In Re Pierce Foods Corp.*, 230 U.S.P.Q. 307 (T.T.A.B. 1986) (addition of the house mark PIERCE presented a materially different mark, which constituted a material alteration); *In Re Ctb Inc.*, 52 U.S.P.Q.2d 1471, 1473, 1476 (T.T.A.B. 1999) (explaining that the standard is the same for evaluating deletion or addition of matter from a mark, and finding that deletion of a flourish design from a mark that included the word "TURBO" was a material alteration because the flourish design was not just a background design, but rather it was "distinctive" and as the Examining Attorney noted, was the first thing a consumer would notice); TMEP § 807.14(a) ("An applicant may request deletions from the mark on the drawing, and the examining attorney may approve the request if . . . the deletions are appropriate and would not materially alter the mark."). Therefore, because the "dot" (and therefore, the stylized Q) is a distinctive design element of the CASHSQUARE Mark, removal of that matter would constitute a material alteration.

While seemingly minor modifications, such as deletion or addition of a punctuation mark, might not always result in a significant alteration of a mark, the United States Patent and Trademark Office has indicated that deletion of a hyphen/dot or addition of even a single punctuation mark *can* materially alter an original mark if the addition or deletion changes the overall commercial impression of the mark. *See, e.g. In Re Dillard Dep't Stores Inc.*, 33

U.S.P.Q.2d 1052, 1053 (Comr. Pats. 1993) (registrant of “IN•VEST•MENTS” mark argued that proposed deletion of features, such as the overall triangular appearance and a stylistic syllabication where syllables were “separated by dots” was merely a removal of hyphens from the registered mark; however, the Commissioner explained it was not appropriate to only consider the terminology contained within a mark. Instead, “[c]ontrary to petitioner's assertion of ‘a minimal background framing design,’ clearly the registered mark contains salient design features apart from the word portion”); *In re Guitar Straps Online, LLC*, 103 U.S.P.Q.2d 1745, 1748 (T.T.A.B. 2012) (finding that the proposed amendment to add a question mark at the end of the original mark “GOT STRAPS” constituted a material alteration because it changed the commercial impression; noting that deletion of a question mark could potentially result in a material alteration as well); TMEP §807.14(c) (listing examples of instances where the addition or deletion of punctuation could alter the commercial impression, including a question mark, spaces between syllables, or a period before the term “.com”).

Contrary to what Applicant argues, the modification at issue here is not minimal, and does not result in the same commercial impression. Motion to Amend at 6, 9, 10, 11 (referring to the alteration as “ever so minimal[]” and constituting “only [one] change” that does not alter the commercial impression). In fact, the cases Applicant cites in support of the no change in commercial impression argument are inapposite. For example, in *Paris Glove of Canada Ltd. v. SBC/Sportco Corp.*, the proposed one line semicircular form of “AQUASTOP” was not materially different from the two line rectangular form of “AQUASTOP” because the commercial impression of the mark was based on the “literal terms” of the mark, and not the word arrangement stylization. 84 U.S.P.Q.2d. 1856, 1862 (T.T.A.B. 2007). In contrast, the proposed modification to the stylized Q here alters the essence of the mark because it removes

the square-within-a-square design, or “dot,” portion of the Mark, which contributes substantially to the commercial impression. *See* Motion to Amend at 10 (Applicant describes the commercial impression as conveyed through the CASHSQUARE name and “overall design of the mark”).

Removal of the “dot” changes the essence of the mark because it removes the distinctive square-within-a-square design, which is the first thing a consumer notices and was intended to evoke the notion of a “pin” on a map and Applicant’s location based services. *See* Teton Declaration ¶ 2, Ex. 1 (Response to Interrogatory No. 2) (according to Applicant, the dot was chosen, at least in part, because it is visually similar to a pin on a map); *In Re Ctb Inc.*, 52 U.S.P.Q.2d at 1473. The “dot” in the stylized Q is integrated into the original Mark and is a feature necessary for recognition of the Mark because of the square within-a-square design. A change in the design of the Mark such as removal of the “dot” ultimately results in a different commercial impression from the original Mark, making the Q no longer stylized, and is therefore prohibited as a material alteration. *See* Trademark Rule 2.72.

Further, the modification fails to “narrow the scope of the dispute before the Board” because, as described above, the proposed modification materially alters the Application such that republication would be necessary “in order to fairly present the mark for purposes of opposition.”<sup>3</sup> Motion to Amend at 6; *Visa Int’l Service Ass’n*, 220 U.S.P.Q. at 743. As explained, the “dot” design contributes substantially to the overall design of the Mark, and removal of the “dot” without republication would potentially prejudice the rights of those who might otherwise oppose the mark.

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<sup>3</sup> Applicant fails to explain how the “proposed amendment serves to limit rather than expand the scope of the goods associated with the mark.” Motion to Withdraw at 7. Instead, Applicant simply states in a conclusory fashion that the modification will “further eliminate any potential ‘confusion’ between Applicant and Opposer’s goods and services” without actually explaining how that could or would theoretically narrow the *scope* of the goods. *Id.*

**C. Applicant Has Not Shown the Original Mark Supports the Proposed Amendment, and Has Not Filed a Substitute Specimen That Could Support It**

In addition to the requirement that a proposed amendment not materially alter the original mark, Trademark Rule 2.72(a)(1) *also* requires that either the original specimen or a substitute specimen filed under 37 C.F.R. § 2.59 support the proposed amendment. *See* Trademark Rule 2.72(a)(1). Once again, Applicant has failed to meet this requirement. The original specimen here contains the “dot,” or square-within-a-square, in the stylized Q. *See* Application. Because the original specimen does not support the proposed amendment (since it materially alters the original Mark), under Section 2.59(a), Applicant was required to submit a substitute specimen and an affidavit or declaration. *See* Trademark Rule 2.59(a), 2.72(a)(1). Specifically, Trademark Rule 2.59(a) allows an applicant to “submit substitute specimens of the mark as used on or in connection with the goods” but the “applicant must verify by an affidavit or declaration under section 2.20 that the substitute specimens were in use in commerce at least as early as the filing date of the application.” This comports with similar requirements for applicants seeking to amend an intent to use application (*see* Trademark Rule § 2.72(b)), or owners seeking to amend a registered mark (*see* Trademark Rule § 2.173(a)). Applicant failed to submit a substitute specimen, or provide an affidavit indicating that the proposed amended CASHSQUARE mark without the stylized Q was in use in commerce *at least as early as the filing date of the application*, i.e., January 21, 2013. Indeed, it cannot given it only began using the proposed amended mark as of November 23, 2014. Teton Declaration ¶ 4, Ex. 5. This failure further demonstrates that the Motion to Amend should be denied.

**D. Applicant Has Failed to Explain the Inconsistencies Between Its Discovery Responses and its Continued Prosecution of the Application**

Lastly, even assuming that Applicant’s proposed amendment does not materially alter the original mark, and that the original specimen supports the proposed amendment, Applicant has

failed to explain why it seeks to modify the “CASHSQUARE” mark when it admits to abandoning either version of its “CASHSQUARE” mark in favor of the “Cash<sup>2</sup>” mark. See Teton Declaration ¶ 2, Ex. 1 (Response to Interrogatory No. 2) (“The stylized Q is no longer being used by the company, and has been replaced by the stylized “CASH<sup>2</sup>.”); *id.* (Response to Interrogatory No. 16) (“In instances where the stylized logo is used, rather than writing out “Cashsquare” there is no risk of confusion because the logo does not use the word “square” but rather a superscripted numeral 2. Without the presence of the word “square” or the stylized Q, there is no risk of confusion.”); *id.* (Response to Interrogatory No. 29) (“Further, Applicant has abandoned its use of the stylized Q in favor of the “Cash<sup>2</sup>” logo. The use of this stylized logo does not use the word “square” and removed any chance of a falsely suggested trade connection.”); *id.* ¶ 3, Ex. 2 ( Response to Request for Admission No. 66) (admitting that the stylized Q in CASHSQUARE looks like Square’s Marks, specifically the Marks in Application Serial Nos. 85/542,832 or 85/542,833). The inconsistencies between Applicant’s discovery responses (and the variety of marks displayed on its websites), and its continued prosecution of this Application demonstrate that: (1) Applicant has either engaged in an abuse of the discovery process by claiming it abandoned the CASHSQUARE Mark; or (2) Applicant’s Motion to Amend the CASHSQUARE Mark as set forth in the Application lacks candor because it would enable Applicant to obtain an earlier filing date than Applicant is entitled to, as Applicant did not adopt the amended mark until well after the January 21, 2013 filing date of the Application, and similarly cannot show the amended mark was used as early as that filing date in a substitute specimen. Either conclusion is fatal to Applicant’s Motion to Amend. The Motion to Amend should therefore be denied.

### **CONCLUSION**

Given that Applicant's proposed modification to remove the "dot" from the stylized Q in the CASHSQUARE Mark is prohibited as a material alteration, Applicant's Motion to Amend should, and must be, denied.

Dated: March 10, 2015

/s/ Hailey C. Teton

Connie L. Ellerbach, Esq.

Hailey Teton, Esq.

FENWICK & WEST LLP

801 California Street

Mountain View, CA 94041

(650) 988-8500

Attorneys for Opposer,  
Square Inc.

**PROOF OF SERVICE**

I declare that:

I am employed in the County of Santa Clara, California.

I am over the age of eighteen years and not a party to the within cause; my business address is Silicon Valley Center, 801 California Street, Mountain View, California 94041. On the date indicated below, I served Opposer Square, Inc.'s Opposition To Applicant's Amended Motion To Amend Application After Notice Of Opposition in said cause, by e-mailing a true copy thereof as indicated below to Applicant's counsel of record, addressed as follows:

Leonard Grayver  
21515 Hawthorne Blvd Ste 450  
Torrance, CA 90503-6531

- ☒ **BY US MAIL:** by placing the document(s) listed above in a sealed envelope for collection and mailing following our ordinary business practices. I am readily familiar with our ordinary business practices for collecting and processing mail for the United States Postal Service, and mail that I place for collection and processing is regularly deposited with the United States Postal Service that same day with postage prepaid.
- ☐ **BY E-MAIL:** by mutual agreement between the parties, causing to be transmitted via e-mail the document(s) listed above to the addressee(s) at the e-mail address(es) listed above.
- ☐ **BY PERSONAL DELIVERY:** by causing to be personally delivered the document(s) listed above to the addressee(s) at the address(es) set forth above.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Mountain View, California, this 10<sup>th</sup> day of March 2015.

Dated: March 10, 2015

  
\_\_\_\_\_  
Nanette M. Barranti

In the matter of  
Trademark Application Serial No.: 85/827,823  
Filed: January 21, 2013  
Published: June 11, 2013  
Mark: CASHSQUARE (and design)

Opposition No. 91212906

2. On September 24, 2014, Applicant Cashesquare, Inc. ("Applicant") served verified responses to Opposer's First Set of Interrogatories. Attached hereto as **Exhibit 1** is a true and correct excerpted copy of Applicant Cashesquare, Inc.'s Responses to Opposer Square, Inc.'s First



Set of Interrogatories, together with its verification.

3. On September 24, 2014, Applicant also served verified responses to Opposer's First Set of Requests for Admission. Attached hereto as **Exhibit 2** is a true and correct excerpted copy of Applicant Cashsquare, Inc.'s Responses to Opposer Square, Inc.'s First Set of Requests for Admission, together with its verification.

4. Attached hereto as **Exhibit 3** is a true and correct copy of a screenshot I took on March 9, 2015, of [www.twitter.com/cashsquare](http://www.twitter.com/cashsquare). This screenshot depicts the website as of that date.

5. Attached hereto as **Exhibit 4** are true and correct copies of screenshots I took on March 9, 2015, of [www.facebook.com/cashsquare](http://www.facebook.com/cashsquare). These screenshots depict Applicant's Facebook "Timeline," and certain photos posted to the "Timeline," as of that date.

6. Attached hereto as **Exhibit 5** are true and correct copies of screenshots I took on March 9, 2015, of Applicant's website [www.cashsquare.com](http://www.cashsquare.com). These screenshots depicts portions of the homepage of the website as of that date.

7. Attached hereto as **Exhibit 6** is a true and correct copy of a screenshot I took on March 9, 2015, of the Cashsquare, Inc. mobile application available for download on the iTunes App Store. This screenshot depicts the mobile application available for download on the iTunes App Store as of that date.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 10, 2015 in Mountain View, California.

/s/ Hailey C. Teton  
Hailey C. Teton, Esq.  
Attorney for Opposer Square, Inc.  
FENWICK & WEST LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
(650) 988-8500

**PROOF OF SERVICE**

The undersigned declares that:

I am employed in the County of Santa Clara, State of California. I am over the age of 18 and not a party to this action. My business address is Silicon Valley Center, 801 California Street, Mountain View, California 94041.

On the date indicated below, I caused to be served the attached:

**HAILEY TETONS' DECLARATION IN SUPPORT OF OPPOSER SQUARE,  
INC.'S OPPOSITION TO APPLICANT'S AMENDED MOTION TO AMEND  
APPLICATION AFTER NOTICE OF OPPOSITION**


On the parties in the subject action by placing a true copy thereof as indicated below, address:

Leonard Grayver  
21515 Hawthorne Blvd Ste 450  
Torrance, CA 90503-6531

- ☒ **BY US MAIL:** by placing the document(s) listed above in a sealed envelope for collection and mailing following our ordinary business practices. I am readily familiar with our ordinary business practices for collecting and processing mail for the United States Postal Service, and mail that I place for collection and processing is regularly deposited with the United States Postal Service that same day with postage prepaid.
- ☐ **BY E-MAIL:** by mutual agreement between the parties, causing to be transmitted via e-mail the document(s) listed above to the addressee(s) at the e-mail address(es) listed above.
- ☐ **BY PERSONAL DELIVERY:** by causing to be personally delivered the document(s) listed above to the addressee(s) at the address(es) set forth above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at Mountain View, California, this 10<sup>th</sup> day of March 2015.

Dated: March 10, 2015

  
\_\_\_\_\_  
Nanette M. Barranti

## **EXHIBIT 1**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of  
Trademark Application Serial No. 85/827,823  
Published in the Official Gazette: June 11, 2013  
Mark: CASHSQUARE

**RECEIVED**  
TM DOCKETING

SEP 29 2014

Fenwick & West

Square, Inc.,	)	
	)	
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v.	)	Opposition No. 91212906
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Cashsquare, Inc.	)	
	)	
Applicant	)	
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**APPLICANT CASHSQUARE, INC.'S RESPONSES TO OPPOSER SQUARE, INC.'S  
FIRST SET OF INTERROGATORIES**

Pursuant to Trademark Rule of Practice 405.04, et seq., and Federal Rule of Civil Procedure 33, Applicant Cashsquare, Inc. ("Cashsquare") hereby responds to Opposer Square, Inc. ("Square")'s First Set of Interrogatories, as follows:

**RESPONSES TO INTERROGATORIES**

**INTERROGATORY NO. 1:**

Describe in detail the facts regarding Your selection and adoption of CASHSQUARE, including without limitation the reason the mark was selected to identify Your Goods and Services (e.g., the impression You sought to convey to consumers with CASHSQUARE), and the Person(s) involved in the selection and adoption of CASHSQUARE.

**RESPONSE TO INTERROGATORY NO. 1:**

CASHSQUARE was selected and adopted because the smart phone mobile gaming service offered by the company integrates Foursquare into a game enabling people to buy and

sell virtual Foursquare versions of real world locations for virtual currency or “cash.” The name was selected because it references both the “CASH” and Four“SQUARE” elements of the game.

**INTERROGATORY NO. 2:**

Describe in detail the facts regarding Your selection and adoption of the stylized “Q” in CASHSQUARE, including without limitation the reason the stylized “Q” was selected to be a part of CASHSQUARE (e.g., the impression You sought to convey to consumers with the stylized “Q”), and the Persons(s) involved in the selection and adoption of the stylized “Q”.

**RESPONSE TO INTERROGATORY NO. 2:**

The stylized Q was developed by a web designer who sold it to the company. The stylized Q was determined to be the most aesthetically pleasing of several options presented by the web designer. The stylized Q was also chosen because it was visually similar to a pin that could be placed on a map location.

The stylized Q is no longer being used by the company, and has been replaced by the stylized “CASH<sup>2</sup>.”

**INTERROGATORY NO. 3:**

Identify and Describe in detail all products and services You have advertised, marketed, offered for sale, or sold under or in connection with CASHSQUARE in the United States, and for each, state when such product or service was first offered by You in the United States.

**RESPONSE TO INTERROGATORY NO. 3:**

The company provides one service: a mobile gaming application for smart phones that allows users to buy a tremendous variety of virtual versions of real-world venues and earn virtual cash rent as people check in at the venues in real time.

**INTERROGATORY NO. 4:**

Identify and Describe in detail all products and services You intend to advertise, market, offer for sale, or sell under or in connection with CASHSQUARE in the United States.

**RESPONSE TO INTERROGATORY NO. 4:**

The company provides one service: a mobile gaming application for smart phones that allows users to buy a tremendous variety of virtual versions of real-world and earn virtual cash rent as people check in at the venues in real time.

**INTERROGATORY NO. 5:**

Identify documents sufficient to show Your intent to advertise, market, offer for sale, or sell under or in connection with CASHSQUARE in the United States for each of the products and services identified in response to Interrogatory No. 3.

**RESPONSE TO INTERROGATORY NO. 5:**

The company's website, available at [www.cashsquare.com](http://www.cashsquare.com), as well as its Facebook page, available at [www.facebook.com/cashsquare](http://www.facebook.com/cashsquare), and Twitter page, available at [www.twitter.com/cashsquare](http://www.twitter.com/cashsquare). The company also offers its product for download via the iTunes App Store.

**INTERROGATORY NO. 6:**

Identify all goods or services that compete or would compete with Your Goods and Services, including all providers of such goods or services.

**RESPONSE TO INTERROGATORY NO. 6:**

Smart phone based mobile gaming applications, provided by innumerable mobile application developers.

**INTERROGATORY NO. 7:**

Describe in detail each incident of actual confusion that you are aware of between Square's SQUARE Mark and CASHSQUARE (including, for each, the identity of the Persons or entities involved, the date on which the incident occurred, the date You first learned of the incident, all documents evidencing or referring to the incident, and all Persons with knowledge of the incident).

**RESPONSE TO INTERROGATORY NO. 7:**

None.

**INTERROGATORY NO. 8:**

Describe each instance in which any Person has challenged, objected to, or questioned CASHSQUARE and/or Your right or authority to use such mark, including without limitation the manner or forum in which the challenge, objection or question was raised and/or resolved.

**RESPONSE TO INTERROGATORY NO. 8:**

Opposition No. 91212906 by Square, Inc.

Moreover, it cannot be the case that any registration application incorporating the common word “square” in any capacity can be deemed to violate the trademark rights of Opposer.

Boris Abaev and representatives of Square, Inc. have knowledge of these facts.

Discovery and investigation are ongoing and are not yet complete. Accordingly, Responding Party reserves the right to supplement this response.

**INTERROGATORY NO. 15:**

Describe in detail any basis for your second affirmative defense, including without limitation all legal theories and doctrines, all facts which support such contentions, and the identity of each Person(s) with knowledge of such facts.

**RESPONSE TO INTERROGATORY NO. 15:**

The mark has gained widespread usage and goodwill, creating distinctiveness, and becoming a valuable asset of Responding Party. The application has been downloaded over 200,000 times since the release of a revised version of the application in August, 2014. Moreover, the mark is inherently distinct, in that it is for entertainment and gaming purposes, rather than the mobile payment system of Opposer.

Boris Abaev and representatives of Square, Inc. have knowledge of these facts.

Discovery and investigation are ongoing and are not yet complete. Accordingly, Responding Party reserves the right to supplement this response.

**INTERROGATORY NO. 16:**

Describe in detail any basis for your third affirmative defense, including without limitation all legal theories and doctrines, all facts which support such contentions, and the identity of each Person(s) with knowledge of such facts.

**RESPONSE TO INTERROGATORY NO. 16:**

There is no likelihood of confusion, mistake or deception because, inter alia, the mark and the pleaded marks of the Opposer are not confusingly similar. Applicant's mark states “Cashsquare” rather than just “Square;” the addition of “cash” in front of “square” is enough to prevent any confusion.

It is clear in all uses that the mark is for a game rather than for a mobile payment service.

Moreover, Applicant has abandoned the use of the stylized Q, in favor of “Cash<sup>2</sup>.” In instances where the stylized logo is used, rather than writing out “Cashsquare” there is no risk of



confusion because the logo does not use the word "square" but rather a superscripted numeral 2. Without the presence of the word "square" or the stylized Q, there is no risk of confusion.

Boris Abaev and representatives of Square, Inc. have knowledge of these facts.

Discovery and investigation are ongoing and are not yet complete. Accordingly, Responding Party reserves the right to supplement this response.

**INTERROGATORY NO. 17:**

Describe in detail any basis for your fourth affirmative defense, including without limitation all legal theories and doctrines, all facts which support such contentions, and the identity of each Person(s) with knowledge of such facts.

**RESPONSE TO INTERROGATORY NO. 17:**

There is no likelihood of confusion, mistake, false suggestion, or deception because, inter alia, the Applicant's mark and the pleaded marks of the Opposer, as used by the parties, are not confusingly similar. Any similarity between the mark and the Opposer's trademark is restricted to that portion of the Applicant's mark containing the word "square", which is not distinctive. Any secondary meaning Opposer may have in its marks is narrowly circumscribed to the exact trademarks alleged and does not extend to any other feature of the trademarks beyond the word "square."

Moreover, Applicant has abandoned the use of the stylized Q, in favor of "Cash<sup>2</sup>." In instances where the stylized logo is used, rather than writing out "Cashsquare" there is no risk of confusion because the logo does not use the word "square" but rather a superscripted numeral 2. Without the presence of the word "square" or the stylized Q, there is no risk of confusion.

Boris Abaev and representatives of Square, Inc. have knowledge of these facts.

Discovery and investigation are ongoing and are not yet complete. Accordingly, Responding Party reserves the right to supplement this response.

**INTERROGATORY NO. 18:**

Describe in detail any basis for your fifth affirmative defense, including without limitation all legal theories and doctrines, all facts which support such contentions, and the identity of each Person(s) with knowledge of such facts.

**RESPONSE TO INTERROGATORY NO. 18:**

There is no likelihood of confusion, mistake, false suggestion, or deception because, inter alia, the Applicant's mark and the pleaded marks of the Opposer are not confusingly similar. Due to extensive third-party use, applications for, or registrations of marks identical or confusingly

**INTERROGATORY NO. 28:**

Describe in detail any basis for your fifteenth affirmative defense, including without limitation all legal theories and doctrines, all facts which support such contentions, and the identity of each Person(s) with knowledge of such facts.

**RESPONSE TO INTERROGATORY NO. 28:**

Applicant's marks and Opposer's marks are not likely to cause confusion, mistake, false suggestion or deception to purchasers as to the source of Opposer's goods or services.

Boris Abaev and representatives of Square, Inc. have knowledge of these facts.

Discovery and investigation are ongoing and are not yet complete. Accordingly, Responding Party reserves the right to supplement this response.

**INTERROGATORY NO. 29:**

Describe in detail any basis for your sixteenth affirmative defense, including without limitation all legal theories and doctrines, all facts which support such contentions, and the identity of each Person(s) with knowledge of such facts.

**RESPONSE TO INTERROGATORY NO. 29:**

Applicant's marks and Opposer's marks are not likely to disparage or falsely suggest a trade connection between Opposer and Applicant. Applicant only uses the word "square" in combination with "cash." The combination of these words is sufficient to distinguish Applicant from Opposer. Further, Applicant has abandoned its use of the stylized Q in favor of the "Cash<sup>2</sup>" logo. The use of this stylized logo does not use the word "square" and removes any chance of a falsely suggested trade connection.

Boris Abaev and representatives of Square, Inc. have knowledge of these facts.

Discovery and investigation are ongoing and are not yet complete. Accordingly, Responding Party reserves the right to supplement this response.

**INTERROGATORY NO. 30:**


Describe in detail any basis for your seventeenth affirmative defense, including without limitation all legal theories and doctrines, all facts which support such contentions, and the identity of each Person(s) with knowledge of such facts.

**RESPONSE TO INTERROGATORY NO. 35:**

These responses were prepared by Boris Abaev with the assistance of counsel.

Dated: September 24, 2014

GREENBERG, WHITCOMBE, TAKEUCHI,  
GIBSON & GRAYVER, LLP

By  \_\_\_\_\_  
Leonard Grayver, Esq.  
Aaron M. Lavine, Esq.  
Attorneys for Applicant, Cashsquare, Inc.


1  
2 VERIFICATION  
3

4 I, BORIS ABAEV, state:  
5

6 I am the Chief Operating Officer of Cashesquare, Inc., a party to this action. I have read the  
7 foregoing Responses to Interrogatories, and know its contents. The matters stated in it are true of my  
8 own knowledge except as to those matters which are stated on information and belief, and as to those  
9 matters I believe them to be true.  
10

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
12 true and correct.  
13

14 Executed on September 24, 2014, at Moscow, Russia.  
15

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18 \_\_\_\_\_  
Boris Abaev  
Cashesquare, Inc.  
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28

## **EXHIBIT 2**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of  
Trademark Application Serial No. 85/827,823  
Published in the Official Gazette: June 11, 2013  
Mark: CASHSQUARE

**RECEIVED**  
TM DOCKETING

SEP 29 2014

Fenwick & West

Square, Inc.,	)	
	)	
Opposer	)	
	)	
v.	)	Opposition No. 91212906
	)	
	)	
Cashsquare, Inc.	)	
	)	
Applicant	)	
	)	
	)	
	)	

**APPLICANT CASHSQUARE, INC.'S RESPONSES TO OPPOSER SQUARE, INC.'S  
FIRST SET OF REQUESTS FOR ADMISSION**

Pursuant to Trademark Rule of Practice 407.03, et seq., and Federal Rule of Civil Procedure 36, Applicant Cashsquare, Inc. ("Cashsquare") hereby responds to Opposer Square, Inc. ("Square")'s First Set of Requests for Admission, as follows:

**RESPONSES TO REQUESTS FOR ADMISSION**

**REQUEST FOR ADMISSION NO. 1:**

Admit that Square's rights in SQUARE predate any rights You claim in CASHSQUARE.

**RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

Objection. This request is vague, ambiguous and unintelligible as phrased. Responding Party admits that Square's trademark registrations predate Cashsquare's trademark application, but denies that all of Square's rights predate all of Cashsquare's rights.

**REQUEST FOR ADMISSION NO. 2:**

Admit that Square used SQUARE before You began using CASHSQUARE.

**RESPONSE TO REQUEST FOR ADMISSION NO. 62:**

Admit.

**REQUEST FOR ADMISSION NO. 63:**

Admit that the stylized "Q" in CASHSQUARE is identical to Square's Marks, specifically the Marks in Application Serial Nos. 85/542,832 or 85/542,833.

**RESPONSE TO REQUEST FOR ADMISSION NO. 63:**

Deny. Responding Party further responds that the use of the stylized Q has been abandoned by Cashsquare.

**REQUEST FOR ADMISSION NO. 64:**

Admit that the stylized "Q" in CASHSQUARE is virtually identical to Square's Marks, specifically the Marks in Application Serial Nos. 85/542,832 or 85/542,833.

**RESPONSE TO REQUEST FOR ADMISSION NO. 64:**

Deny. Responding Party further responds that the use of the stylized Q has been abandoned by Cashsquare.

**REQUEST FOR ADMISSION NO. 65:**

Admit that the stylized "Q" in CASHSQUARE is similar to Square's Marks, specifically the Marks in Application Serial Nos. 85/542,832 or 85/542,833.

**RESPONSE TO REQUEST FOR ADMISSION NO. 65:**

Admit. Responding Party further responds that the use of the stylized Q has been abandoned by Cashsquare.

**REQUEST FOR ADMISSION NO. 66:**

Admit that they stylized "Q" in CASHSQUARE looks like Square's Marks, specifically the Marks in Application Serial Nos. 85/542,832 or 85/542,833.

**RESPONSE TO REQUEST FOR ADMISSION NO. 66:**

Admit. Responding Party further responds that the use of the stylized Q has been abandoned by Cashsquare.

**REQUEST FOR ADMISSION NO. 82:**

Admit that CASHSQUARE creates a likelihood of confusion, mistake, or deception as to Your affiliation, connection, or association with Square.

**RESPONSE TO REQUEST FOR ADMISSION NO. 82:**

Deny.

**REQUEST FOR ADMISSION NO. 83:**

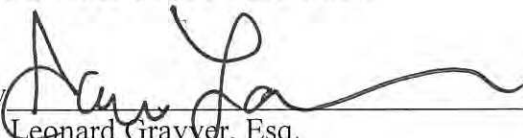
Admit that CASHSQUARE is likely to impair the distinctiveness of SQUARE.

**RESPONSE TO REQUEST FOR ADMISSION NO. 83:**

Deny.

Dated: September 24, 2014

GREENBERG, WHITCOMBE, TAKEUCHI,  
GIBSON & GRAYVER, LLP

By   
Leonard Grayver, Esq.  
Aaron M. Lavine, Esq.  
Attorneys for Applicant, Cashsquare, Inc.



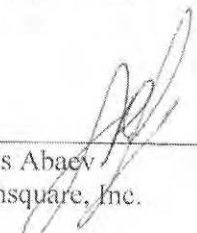
1  
2 VERIFICATION  
3

4 I. BORIS ABAEV, state:  
5

6 I am the Chief Operating Officer of Cashsquare, Inc., a party to this action. I have read the  
7 foregoing Responses to Requests for Admissions, and know its contents. The matters stated in it are  
8 true of my own knowledge except as to those matters which are stated on information and belief, and as  
9 to those matters I believe them to be true.  
10

11 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
12 true and correct.  
13

14 Executed on September 24, 2014, at Moscow, Russia.  
15

16  
17   
18 Boris Abaev  
19 Cashsquare, Inc.  
20  
21  
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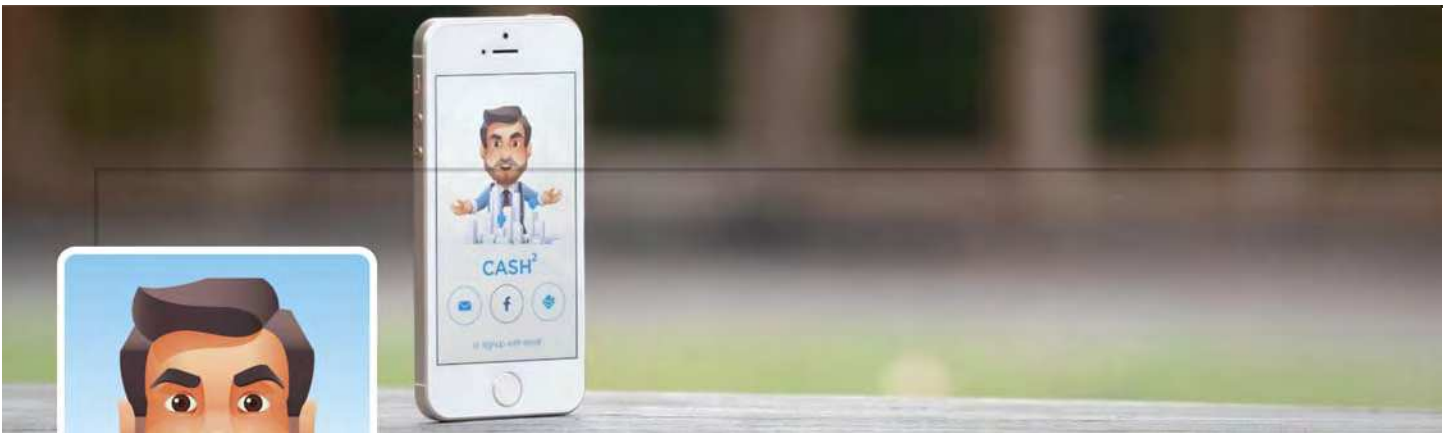
## **EXHIBIT 3**



Search Twitter



Have an account? Log in

TWEETS  
1,438FOLLOWING  
2,931FOLLOWERS  
3,056FAVORITES  
20LISTS  
1

Follow

## Cashsquare

@cashsquare

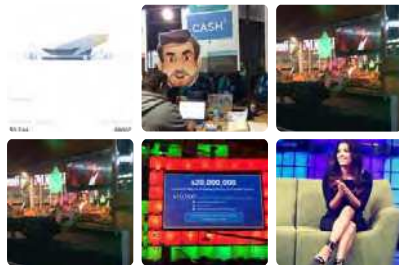
A new location-based social gaming #app that lets you buy and sell your favorite places on #foursquare #followback [facebook.com/cashsquare](https://facebook.com/cashsquare)

Worldwide

[cashsquare.com](https://cashsquare.com)

Joined July 2012

17 Photos and videos



Tweets   Tweets &amp; replies   Photos &amp; videos

**Cashsquare** @cashsquare · 12h

How I did on Twitter this week: 7 Mentions. How'd your week go? via [sumall.com/myweek](https://sumall.com/myweek)

**Cashsquare** @cashsquare · Mar 2

How I did on Twitter this week: 37 Mentions, 118 Mention Reach, 2 Favorited. How'd your week go? via [sumall.com/myweek](https://sumall.com/myweek)

**Cashsquare** @cashsquare · Feb 26

In a couple of hours we will be going into a long maintenance break! This is required before the big update. #cashsquare #update #break

**Cashsquare** @cashsquare · Feb 26

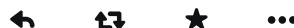
In a couple of hours we will be going into a long maintenance break! This is required before the big update. — feeling excited

**Cashsquare** @cashsquare · Feb 23

we are up and running again!

**Cashsquare** @cashsquare · Feb 23

We are up and running again!

**Cashsquare** @cashsquare · Feb 22

How I did on Twitter this week: 5 Mentions, 95 Mention Reach, 2 Favorited. How'd your week go? via [sumall.com/myweek](https://sumall.com/myweek)

## **EXHIBIT 4**

Cashsquare - Own the places you love | ...

https://www.facebook.com/cashsquare?\_rd...

Google

facebook

Email or Phone

Password

Log In

☐ Keep me logged in


Forgot your password?

Cashsquare - Own the places you love is on Facebook.

To connect with Cashsquare - Own the places you love, sign up for Facebook today.

Sign Up

Log In



Cashsquare - Own the places you love

App Page

Timeline

About

Photos


Likes

More

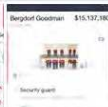


PEOPLE




4,668 likes




APPS

 Feedback

PHOTOS







Cashsquare - Own the places you love 🤖 feeling excited

February 26 at 1:55pm · 🌐

In a couple of hours we will be going into a long maintenance break! This is required before the big update.

Like · Comment · 🗨️ 5

Cashsquare - Own the places you love

February 23 at 8:45am · 🌐

We are up and running again!

Like · Comment · 🗨️ 4

Cashsquare - Own the places you love


February 21 at 4:14pm · 🌐

Hi, the servers are down! We will be back at 6am CET. Sorry for this technical downtime

Like · Comment · 🗨️ 2

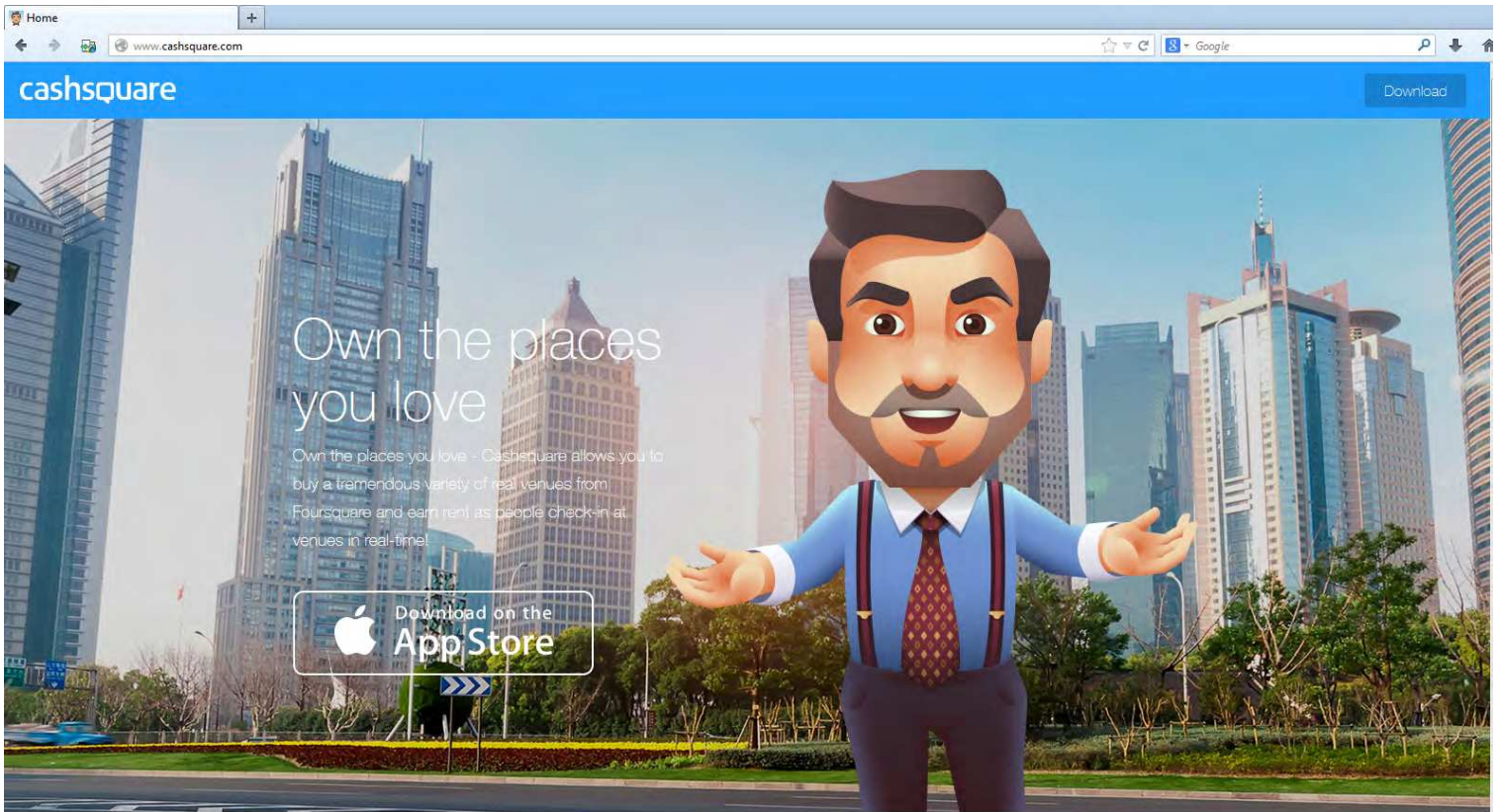
Cashsquare - Own the places you love changed their profile picture.

February 13 at 3:31am · 🌐





## **EXHIBIT 5**





Home

+

www.cashsquare.com

Google

cashsquare

Download

Like our page on Facebook and get exclusive information about Cashsquare

Like

Share

4,668 people like this

РИА НОВОСТИ

“ Now you can buy anything, whether it is the Kremlin or the Bolshoi Theatre.

ВЕДОМОСТИ

“ Cashsquare the Monopoly killer was valued at \$4.5 Million.

МОСКОВСКИЕ НОВОСТИ

“ Moscow will become a huge playing board.

## **EXHIBIT 6**



# Cashsquare - Location-Based...

4+

Cashsquare Inc. >  
Offers In-App Purchases

No Ratings

GET

- Details
- Reviews
- Related

